IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5192 OF 1996

Kiran Machine Tools .. Petitioner

versus

Shri D.D. Hinge & Anr.. .. Respondents

...

Mrs.Indrayani Koparkar i/b N.P. Deshpande for the petitioner.

Mr.A.S. Perreira for the respondent no.1.

CORAM : B.H. MARLAPALLE,J

DATED : 18th August 2005.

ORAL JUDGEMENT :

1. The petitioner is aggrieved by the order dated 14th May 1996 passed by the learned Presiding Officer of IInd Labour Court at Pune in Miscellaneous Application (IDA) No.52 of 1995. The said

application was submitted for setting aside the ex-parte award dated 12th July 1995 passed in Reference (IDA) no. 476/94 and it came to be dismissed by the Labour Court.

2. The petitioner is a proprietory concern and the respondent was its workman whose services were terminated purportedly on 25th February 1994. Therefore, he had made a demand for reinstatement in service with back wages and consequential benefits. Inspite of the service of notice in the same reference, the petitioner did not cause its appearance before the Labour Court and oppose the reference. The workman therefore filed an affidavit by way of his evidence and adopted the contentions raised in the statement of claim on the basis of which the learned Presiding Officer proceeded to pass the ex-parte award directing reinstatement of the workman with full back wages from the date of termination. Though the application for restoration was filed on 20th November 1995, an application for condonation of delay was filed for the first time on 8th April 1996. The learned Presiding Officer held that the applicant could not make out a case of sufficient cause to entertain the application filed

beyond 30 days and dismissed the application by the impugned order.

3. Rules 26(1) of the Industrial Disputes (Bombay) Rules 1957 states that if without sufficient cause being shown, any party to a proceeding before the Labour Court fails to attend, it may proceed ex-parte and sub-rule (2) thereunder reads as under:-

> "Where any award, order or decision is made ex-parte under subrule (1), the aggrieved party may within thirty days of the receipt of a copy thereof, make an application to the Board, Court, Labour Court, Tribunal or an Arbitrator, as the case may be to set aside such award, order of decision. If the Board, Labour Court, Tribunal or Arbitrator is satisfied that there was sufficient cause for non -appearance of the aggrieved party, it or he may set aside the award, order or decision so made and shall appoint

a date for proceeding with the matter.

Providing that, no award, order or decision shall be set aside on any application as aforesaid notice thereof has been served on the opposite party."

4. Section 17 of the Industrial Disputes Act 1947 (for short 'the I.D. Act') states that every award passed by the Labour Court shall be published within a period of 30 days from the date of its receipt by the appropriate Government and subject to the provisions of section 17-A, the award that was published shall be final and shall not be called in question by any court in any manner whatsoever.. As per section 17-A of the I.D Act, an award passed by the labour court shall become enforceable on the expiry of 30 days from the date of its publication u/s.17. As per section 20(3) of the I.D. Act, proceedings before a Labour Court shall be deemed to have commenced on the date of the reference of the dispute for adjudication and such proceedings shall be deemed to have concluded on the

date on which the award becomes enforceable u/s.17-A.

5. The interpretations of Rule 26(2) of the Rules fell for considerations in the case of Grindlays Bank Ltd. vs. The Central Government Industrial Tribunal reported in AIR 1981 SC 606 and after considering the scheme of sections 17, 17-A and 20 of the I.D. Act, their Lordships in paragraph 14 observed as under:-

> "The contention that the Tribunal had become functus officio and, therefore, had no jurisdiction to set aside the ex-parte award and that the Central Government alone could set it aside does not commend to us. Sec.20 of the Act provides that the proceedings before the Tribunal would be deemed to continue till the date on which the award becomes enforceable under section 17-A.. Under sec.17-A of the Act, an award becomes enforceable on the expiry from the date of its publication under Sec.17. The proceedings with regard to a reference under Sec.10 of the Act are,

> therefore, not deemed to be concluded until the expiry of 30 days from the publication of the award. Till then the Tribunal retains jurisdiction over the dispute referred to it for adjudication and up to that date it has the power to entertain an application in connection with such dispute. That stage is not reached till the award becomes enforceable under Sec.17-A."

6. These observations imply that an application submitted under Rule 26(2) of the Rules beyond 30 days from the date of publication of award cannot be entertained as the Labour Court would become functus officio after expiry of the period of 30 days from the date of publication.

7. In the instant case,, though the award passed ex-parte was dated 1st July 1995, it was published on 5th October 1995 and the petitioner claims to have received copy of the same on 11.10.1995. The petitioner failed to apply to the

Labour Court under Rule 26(2) of the Rules within a period of 30 days with reference to 5.10.1995 or 11th October 1995. Under such circumstances, as per the law laid down in the case of Grindlays Bank Ltd. (Supra), the Labour Court had become functus officio and it could not have entertained the application. The order passed by the Labour Court rejecting the application for restoration therefore cannot be termed as manifestly erroneous or patently illegal so as to call for interference under Article 227 of the Constitution.

8. In the result, this petition fails and the same is hereby dismissed. Rule discharged. No costs.

B.H. MARLAPALLE, J